



2026:DHC:1197



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 12.02.2026

+ **BAIL APPLN. 3351/2024**

YASH GUPTA

.....Petitioner

Through: Mr. Vikram Hegde, Advocate

versus

NARCOTICS CONTROL BUREAURespondent
Through: Mr. Arun Khatri, SSC with Ms.
Shelly Dixit, Advocate

CORAM: JUSTICE GIRISH KATHPALIA

JUDGMENT (ORAL)

1. The accused/applicant seeks regular bail in Crime No. VIII/37/DZU/2023 for offence under Section 8(c)/22/23NDPS Act.

2. This bail application was first listed on 17.09.2024 before the predecessor bench and thereafter continued getting adjourned. Today, for the first time this application has come up before me.

3. Neither the standing counsel for NCB nor the Investigating Officer has appeared. It seems that NCB is not seriously interested in opposing this bail application.



4. Broadly speaking, the allegation against the accused/applicant is that from office of the courier company, 1.706 kg Tramadol tablets were recovered. The said quantity is commercial quantity of the recovered contraband, so prosecution invokes Section 37 NDPS Act. The role ascribed to the present accused/applicant is that the seized consignment of contraband was booked by co-accused Ajit on instructions of the accused/applicant.

5. Against the above backdrop, learned counsel for accused/applicant submits that he is in jail since 02.01.2024 and chargesheet already stands filed and trial is ongoing. It is also submitted that all witnesses of prosecution are NCB officials, so there is no possibility of tampering with the evidence if the accused/applicant is released on bail.

6. On behalf of NCB, as mentioned above, learned standing counsel was not present and learned associate counsel had addressed arguments. But at this stage during dictation, learned standing counsel for NCB has appeared through videoconferencing and he submits that his associate counsel present in the courtroom is authorized to address.

7. Learned counsel for NCB contends that the twin tests contemplated under Section 37 NDPS Act have to come into play and accordingly, this bail application deserves to be dismissed. As evidence to establish that it is the accused/applicant who had instructed the co-accused to book the consignment of contraband, learned counsel for NCB seeks to place reliance on printouts of certain WhatsApp chats, filed with index dated 29.01.2026. No other evidence connecting the accused/applicant with the contraband



consignment has been referred to.

8. So far as applicability of Section 37 NDPS Act is concerned, no doubt twin conditions would come into play in case of recovery of commercial quantity of contraband. But before such provision is invoked, the Court must be satisfied that there is some reliable evidence to connect the accused with the alleged recovery of the contraband. Where there is no reliable evidence to that effect, denying liberty to the accused under the garb of twin test would be completely unfair.

9. As mentioned above, according to prosecution side apart from the said printouts of WhatsApp chats, there is no other material to connect the accused/applicant with the allegedly recovered contraband. It is nobody's case that the contraband was recovered from possession of or at the instance of the accused/applicant.

10. I have examined those printouts filed with Index dated 29.01.2026. The same are not continuous WhatsApp chats and are simply certain encrypted text prints. Further, all those text prints bear a stamp of SIFS, but learned counsel for NCB expresses unawareness about the full form of SIFS and as to whether it is a government lab. In this regard, learned counsel for accused/applicant submits that SIFS is Sherlock Institute of Forensic Sciences, which is a private lab. Without entering into authenticity of the lab, suffice it to record that the printouts on which reliance is made by NCB *prima facie* do not appear to be continuous WhatsApp chats. Of course, this aspect shall be tested during trial. But for present purposes, I am unable to



find sufficient material to connect the accused/applicant with the alleged recovery for invoking the stringent conditions of Section 37 NDPS Act.

11. Not only this, as mentioned above, the NCB also does not appear to be seriously interested in opposing this bail application. At this stage, standing counsel appearing through videoconferencing submits: "*This is strange because counsel for NCB is present*". But there is no explanation as to why the Investigating Officer has not appeared to assist the learned counsel for NCB and respond as regards connection between the accused/applicant and the allegedly recovered contraband.

12. Considering the above circumstances, I do not find any reason to deprive further liberty to the accused/applicant. Therefore, the bail application is allowed and accused/applicant is directed to be released on bail subject to his furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the Trial Court.

13. A copy of this order be immediately transmitted to the concerned Jail Superintendent for informing the accused/applicant.

**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 12, 2026/as